SUPREME COURT, U. S.
FILED
DEC 17 1974
MICHAEL RODAK, JR., CLERK

NO. 74-204

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

CASPAR W. WEINBERGER,

Secretary of Health,
Education & Welfare,

Petitioner,

vs.

GEORGE ELDRIDGE,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

On April 6, 1973 the District Judge for the United States District Court for the Western District of Virginia decreed that George Eldridge must be afforded a hearing prior to termination of Social Security disability benefits. On April 1, 1974 the District Judge's opinion was summarily affirmed by the United States Court of Appeals for the Fourth Circuit. The Respondent points out that both the Fourth Circuit and the Fifth Circuit hold that due process forbids termination of disability benefits in the absence of oral evidentiary hearings (Williams v. Weinberger, 494 F.2d 1191 (C.A.5)).

The Eldridge case illustrates the need for an oral evidentiary hearing prior to termination of benefits as pointed out in the opinion and order of the District Judge. George Eldridge was twice denied disability benefits based upon the written application and medical reports, and on both occasions disability benefits were reinstated following an evidentiary hearing. A disability recipient who has once been declared disabled finds it difficult to comprehend the termination of benefits when their medical condition has not improved. Where due process is involved this Court has held that the State's concern in preventing an increase in its fiscal and administrative burden is outweighed by the interests of the welfare recipient's not receiving payments and the State's interests that the payments not be erroneously terminated. The District Judge responded to this overstatement by the Secretary.

The Secretary leaves the disability claimant at the mercy of the writing ability of his treating physician. Certainly, if evidentiary hearings are essential to establish entitlement to benefits an evidentiary hearing would be equally beneficial prior to their terminating benefits.

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CONCLUSION

For the reasons stated by the District Judge, which it is not felt need be reiterated in this brief, as well as the holdings in the Fourth and Fifth Circuit Courts, it is respectfully submitted that an oral evidentiary hearing is a vital procedural safeguard to disability recipients; and for these reasons the Petition for Certiorari filed by the Secretary should not be granted.

Respectfully submitted.

CLINE, McAFEE, ADKINS & GILLENWATER

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IN THE SUPREME COURT OF THE UNITED STATES

CASPAR WEINBERGER, SECRETARY OF
HEALTH, EDUCATION AND WELFARE

vs.

GEORGE H. ELDRIDGE

No. 74-204

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 53, paragraph 1, of the Rules of this Court, motion is hereby made that the respondent be allowed to proceed forma pauperis. Petitioner's affidavit is attached to this motion.

George H. Eldridge
-By Counsel-

CLINE, McAFEE, ADKINS & GILLENWATER
Attorneys at Law
Professional Arts Building
Norton, VA 24273

BY _____
COUNSEL FOR RESPONDENT

Dec. 3 1974 Motion Granted, Time for filing reponse to petition for writ of certiorari extended to and including Dec. 9, 1974
Clerk

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IN THE SUPREME COURT OF THE UNITED STATES

CASPAR WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE	)	
vs.	)	AFFIDAVIT
	)	No. 74-204
GEORGE H. ELDRIDGE	)	

I, George Eldridge, been duly sworn deposes and say:

This affidavit is being executed for use in support of a Motion for Leave to proceed in forma pauperis in the Supreme Court of the United States in a proceeding in which I am the respondent. This proceeding involves an action by me in the United States District Court for the Western District of Virginia for payment of Social Security Benefits. I was successful in the District Court and the Secretary of Health, Education, and Welfare appealed to the District Court's opinion to the Fourth Circuit Court of Appeals. The Circuit Court of Appeals affirmed the District Court and the Secretary of Health, Education and Welfare has now petitioned for a writ of certiorari of this Court. My attorney has been instructed to file a brief in response to the petition previously filed on the brief of the secretary.

Due to the very nature of my case I am unable to expend any mony to reimburse my attorney for any cost in preparing a response to the government petition. Because of my poverty I am unable to pay the fees and costs, or to give security thereof, and still be able to provide myself and my dependents with the necessities of life. I believe I should be allowed to proceed as a pauperis.

George H. Eldridge
GEORGE H. ELDRIDGE

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STATE OF VIRGINIA

COUNTY OF WISE, to-wit:

I, Paula F. Clark, a Notary Public within and for the county and state aforesaid, do hereby certify that George Eldridge, whose name is signed to the foregoing affidavit, bearing the date of the 25th day of November, 1974, has this day acknowledged the same before me in my county and state aforesaid.

Given under my hand this the 25th day of November, 1974.

My Commission expires August 12, 1977.

Paula F. Clark
NOTARY PUBLIC

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